

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

JOHN W. SHADE, III,

Plaintiff,

v.

CIVIL ACTION NO. 1:22-00043

ROKOSKY, Warden, FCI McDowell,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order, this action was referred to United States Magistrate Judge Dwane L. Tinsley for submission of findings and recommendations regarding disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Judge Tinsley submitted to the court his Findings and Recommendation ("PF&R") on December 7, 2022, in which he recommended that the district court grant defendant's motion to dismiss with prejudice, deny as moot plaintiff's petition under 28 U.S.C. § 2241, and dismiss the matter from the court's docket.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge Tinsley's Findings and Recommendation. The failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989). Neither party filed objections within the required time period.

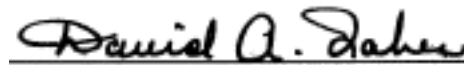
Having reviewed the Findings and Recommendation filed by Magistrate Judge Tinsley, the court adopts the findings and recommendations contained therein. Accordingly, the court hereby **GRANTS** defendant's motion to dismiss with prejudice, **DENIES** as moot plaintiff's petition under 28 U.S.C. § 2241, and dismisses this case from the court's active docket.

Additionally, the court has considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly, the court **DENIES** a certificate of appealability.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to plaintiff and counsel of record.

IT IS SO ORDERED this 2nd day of March, 2023.

ENTER:

A handwritten signature in black ink, appearing to read "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge